IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 662 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PIYUSH VITHALBHAI SURYAWALA

Versus

STATE OF GUJARAT

Appearance:

MR AR MAJMUDAR for Petitioner

MR SAMIR DAVE, APP for Respondent No. 1

MR BS OZA for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/12/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The respondent had filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner being Complaint No.6/96 in the court of

Judicial Magistrate, First Class, Sankheda. This complaint was re.: cheque which was given by petitioner to the respondent No.2 and on presentation of the same, it was dishonoured. It is not in dispute that the amount of cheque has been paid during the pendency of these proceedings by petitioner to the complainant-respondent On receipt of summons of the complaint, the petitioner filed an application and prayed therein for his discharge in the case on the ground that the statutory notice as required, on dishonour of cheque, has not been given to him by respondent No.2 within the stipulated period. The learned courts below have not accepted this plea of the petitioner. Hence this special criminal application.

#. The learned counsel for the respondent-complainant is not seriously opposing this special criminal application and rightly so as the amount of dishonoured cheque has been paid by petitioner to the respondent-complainant. From the facts of this case, I find that a legal notice has not been given to the petitioner by respondent-complainant after dishonour of cheque. Sine-qua-non for filing of the complaint and taking cognizance and proceedings under section 138 of the Act after cheque has been dishonoured for payment a valid notice which has not been given in this case and, as a result of which, the petitioner-accused deserves to be discharged in the complaint accordingly.

#. In the result, this petition succeeds and the same is allowed and the petitioner is discharged in the criminal case No.6/96 pending in the court of Judicial Magistrate, First Class, Sankheda. Rule is made absolute accordingly. No order as to costs.

.....

(sunil)